HIGH COURT OF DELHI : NEW DELHI

Date of decision:3rd September, 2007

W.P (C) No.8650/2003

#Sub Inspector Om Prakash .....Petitioner
! Through: Ms. Avnish Ahlawat & Ms.Latika Chaudhary, Advocates

versus

$ UOI & Ors. ..... Respondent
^ Through: Mr.V.K. Diwan, Advocate

***CORAM:**

HON”BLE MR.JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest?

A.K.SIKRI, J.

1. This is the second round of litigation as far as we are concerned. Departmental Enquiry was held against the petitioner vide chargesheet dated 21.11.94. The allegation was

that while working as Clearing Officer in departure Left Wing in shift 'B' at IGI Airport, the petitioner gave immigration clearance to one passenger named Ajay Pal Singh after demanding and accepting Rs.100 from him. The said passenger had submitted his complaint on the suggestions/complaint card before leaving IGI Airport, New Delhi by flight no. AC-897 which was bound for Vancouver, Canada. The Enquiry Officer after conducting the enquiry recorded his finding to the effect that charges against the petitioner were not proved. However, disciplinary authority differed with the same. Along with the enquiry report, note of disagreement was served upon the petitioner. Petitioner submitted his reply thereto and after considering the same, detailed order dated 28th July, 1995 was passed against the petitioner imposing upon him the punishment of forfeiture of 3 years of approved service and reducing the pay for a period of 3 years with the stipulation that the petitioner would not earn increment throughout the period of reduction and It will also affect the future increments. Petitioner submitted his appeal which was dismissed vide order dated 17.5.1996. After exhausting the statutory remedies, petitioner filed OA No. 1764/1996 before the Tribunal challenging the impugned punishment orders and the order passed by the Appellate

Authority.

2. This petition was dismissed by the learned Tribunal, vide judgment dated 7th March, 2000. Feeling aggrieved, petitioner preferred Writ Petition in this Court alleging that on the day when his application was heard by the Tribunal there was a strike by the lawyers and therefore lawyer of the petitioner could not appear and advance arguments. It was also submitted that the Tribunal had proceeded to consider the claim ignoring the law laid down by the Supreme Court in the case of ***Punjab National Bank vs. Kunj Behari*** (1998) 7 SCC 84 and some other contentions raised in the OA, which were not looked into by the Tribunal. The Court rejected this plea of the petitioner, vide order dated 15.4.2000. It was observed that in case the contentions taken by the petitioner were not considered by the Tribunal, the appropriate remedy was to file an application for review. Giving liberty to petitioner to file a Review Petition, Writ Petition was dismissed.

3. The petitioner in these circumstances filed Review Petition which has also been dismissed by the learned Tribunal vide impugned order dated 21.5.2003. Challenging these orders, present petition is preferred by the petitioner.

4. The main ground on which the order of the Tribunal is

assailed is that the disciplinary authority did not give the petitioner opportunity of being heard before arriving at the conclusion that the charges against the petitioner stood proved. Submission was that in case disciplinary authority was differing with the Enquiry Officer it was incumbent upon the disciplinary authority to give tentative note of disagreement and afford an opportunity to the petitioner to represent against the same and only thereafter disciplinary authority could arrive at the final conclusion. It was also submitted that after arriving at his final conclusion, there was another obligation on the part of the disciplinary authority to serve the copy of his final findings and give another opportunity to the petitioner to represent against the proposed punishment. Ignoring this the disciplinary authority passed the orders dated 28th July, 1995 imposing the punishment upon the petitioner as mentioned above.

5. Learned counsel for the petitioner in support of this proposition has referred to the judgment of Supreme Court in ***PNB vs. Kunj Behari*** (supra) which is followed by the Supreme Court in ***Lav Nigam vs. Chairman and MD ITI Ltd. and Anr.*** 2006 (9) SCC 440. It is not in dispute and could not be disputed even by the learned counsel for the respondent that in case the disciplinary authority differs from the findings arrived at by the

Enquiry Officer, the disciplinary authority has to record its tentative reasons on which there was disagreement and at the same time giving opportunity to the delinquent before it records its findings. This principal of law is stated in the following terms by the Supreme Court in ***Kunj Behari*** (supra).

> "18. Under Regulation - 6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case.
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> 19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement

> and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

6. It is, however, to be seen as to whether such an opportunity was given to the petitioner in the instant case or not. We find from the record that the disciplinary authority had served notice dated 30th May, 1995 upon the petitioner in which he has referred to the enquiry conducted against the petitioner and the report of the Enquiry Officer as also given the reasons as to why disciplinary authority was not inclined to agree with the findings of the Enquiry Officer.

7. Learned counsel for the petitioner does not dispute service of this notice and reply dated 5th July, 1995 given by the petitioner thereto. Her grievance is to the manner the disciplinary authority recorded his findings finally in the said notice, which, according to her were as good as final, and therefore it was not in the nature of the show-cause notice.

8. We have gone through the said notice dated 30th May,

1995 and do not agree with the aforesaid submissions of the learned counsel for the petitioner. No doubt, after recording the findings of the Enquiry Officer, the disciplinary authority proceeds with these remarks that it does not agree with the Enquiry Officer for the reasons stated therein. After spelling out his reasons, the last para of this notice reads as under :-

> "The findings of the EO is enclosed herewith. I, S.K. Jain, Dy. Commissioner of Police/FRRO, New Delhi being the Disciplinary Authority of the instant delinquent employee will take a suitable decision after considering all the facts mentioned above. Is, SI Om Prakash No. 1273/D wishes to make any representation/submission he can do so in writing to the undersigned within 15 days from the date of receipt of this communication. He is also at liberty to say anything in his defence in the OR of the undersigned on the date, so fixed on his request."

9. The apt conclusion that can be drawn from above extract is that the disciplinary authority had mentioned that he would pass suitable decision after considering all the facts and the representation of the petitioner for which petitioner was given 15 days' time from the date of receipt of the said communication. Thus the disciplinary authority had not taken a final decision and the reasons given because of which he chose to agree with the Enquiry Officer were his tentative reasons. This becomes further clear from the reply which is furnished by

the petitioner to this notice. Perusal of this reply would indicate that the petitioner adverted to those reasons and also heavily relied upon the findings recorded by the Enquiry Officer and pleaded before the disciplinary authority that the findings of the Enquiry Officer were correct and should be accepted.

10. Thereafter, in the order dated 28th July, 1995 each of the contentions raised by the petitioner in his reply to the notice has been considered but it did not find favour with the disciplinary authority. Therefore, we are of the view that the petitioner was given adequate opportunity to make representation which was duly considered by the disciplinary authority before passing the final orders and the proceeddure which were required to be followed in terms of ***Kunj Behari*** (supra) have been followed in this case.

11. It was not necessary to afford any further opportunity of hearing to the petitioner as contented by the learned counsel for the petitioner. This aspect stands concluded by another judgment in the case of ***State of Rajasthan vs. M.C. Saxena*** 1998 (1) LLJ 218.

12. We are, therefore, of the opinion that the matter does

not call for any interference in exercise of our power of judicial review under Article 226 of the Constitution of India.

This writ petition is accordingly dismissed.

A.K.SIKRI, J.

VIPIN SANGHI, J.

September 03, 2007
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